

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

JAMES SIMS,

Debtor.

JAMES SIMS,

Movant,

vs.

CROSSROADS DINOR, LTD,

Respondent.

Bankruptcy No. 09-21812-TPA

Adversary No.

Chapter 11

Document No.

Related to Doc. No.

**Hearing Date and Time:
None scheduled yet**

**COMPLAINT FOR VALUATION OF SECURITY CLAIM PURSUANT TO 11 U.S.C.
§506(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3012**

AND NOW comes James Sims, by and through his Counsel, Robert O Lampl, John P. Lacher and Elsie R. Lampl and files the following **COMPLAINT FOR VALUATION OF SECURITY CLAIM PURSUANT TO 11 U.S.C. §506(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3012** as follows:

1. The Movant is James Sims, the Debtor in the above Chapter 11 Case.
2. The Respondent is Crossroads Dinor, LTD ("Crossroads Dinor").
3. The Debtor, jointly with his non-debtor spouse, owns the real property located at 101 West Plum Street, Edinboro, Pennsylvania 16412.
4. The Property, as stated by Respondent in its Relief from Stay Motion, is subject to real estate tax arrears, federal tax liens, and three (3) mortgages, as follows:
 - a. Real estate taxes in the amount of \$6,947.86;
 - b. Federal tax liens in the amount of \$11,293.40;

c. A first mortgage by and between the Debtor and his spouse and Northwest Savings Bank securing an indebtedness of approximately \$361,856.28 which Proof of Claim was filed at Claim No. 11;

d. A second mortgage by and between the Debtor and his spouse and Northwest Savings Bank securing an indebtedness of approximately \$135,040.32 which Proof of Claim was filed at Claim No. 12;

e. A third mortgage by and between the Debtor and his spouse and the Respondent securing an indebtedness of approximately \$434,304.00. This claim is disputed.

5. Crossroads Dinor has filed a Proof of Claim in this case at Claim No. 7 which asserts a secured claim against the Debtor in the amount of \$448,558.89.

6. The Debtor disputes the amount of this claim and has filed an objection to this claim based upon the amount of its secured status. An Objection to Claim was filed by the Debtor on July 14, 2009.

7. The Property at issue is necessary to an effective reorganization of the Debtor in this Chapter 11 Case.

8. To expedite reorganization, this Motion requests a determination of the valuation of the property and a determination of the amount of the secured claim held by Crossroads Dinor.

9. The Debtor believes and therefore avers that the Respondent is wholly unsecured and has no secured claim in the property at issue. This is calculated as follows:

a. Market value as appraised in 2007- \$440,000.00;

- b. Less Real Estate Taxes- \$6,947.86;
- c. Less First Mortgage held by Northwest Savings Bank securing an indebtedness of approximately \$361,856.28 (Claim No. 11); and
- d. Less Second Mortgage held by Northwest Savings Bank securing an indebtedness of approximately \$135,040.32 (Claim No. 12)

10. In the alternative, to the extent that this court finds that the Respondent is a secured creditor, Respondent should not be entitled to receive post-petition interest, costs, and attorneys fees in accordance with ***In Re Indian Palms Associates, 61 F.3d 197, 207 (3d Cir. 1995); 11 U.S.C. Section 506(a).***

WHEREFORE, it is respectfully requested that this Honorable Court determine pursuant to 11 U.S.C. §506(a) and Federal Rule of Bankruptcy Procedure 3012 that Crossroads Dinor has no secured claim and is wholly unsecured.

Respectfully Submitted,

/s/ Robert O Lampl
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CERTIFICATE OF SERVICE

Robert O Lampl, John P. Lacher and Elsie R. Lampl, hereby certify, that on the 14th day of July, 2009, a true and correct copy of the foregoing **COMPLAINT FOR VALUATION OF SECURITY CLAIM PURSUANT TO 11 U.S.C. §506(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 3012** was served upon the following (*via electronic service and/or first class mail*):

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/s/ Robert O Lampl

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